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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RELMON HENRY DAVIS,

Defendant and Appellant.

F075017

(Super. Ct. No. 15CMS7004)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Donna L. Tarter, Judge.

Robert L.S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Jamie A. Scheidegger, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J. and Peña, J.

INTRODUCTION

A jury found appellant, Relmon Henry Davis, guilty of being an inmate in possession of a weapon (Pen. Code, § 4502, subd. (a))¹ and that appellant had suffered two prior strike convictions and served two prior prison terms (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b)). The trial court sentenced appellant to an aggregate indeterminate prison term of 27 years to life. The sentence was based on the term of 25 years to life for the inmate in possession of a weapon conviction, plus two consecutive one-year terms for the prior prison term enhancements.

On appeal, appellant contends the trial court prejudicially erred by informing the jury of his prior criminal acts thereby denying him a right to an impartial jury. Upon review, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Relevant Facts

On September 3, 2014, appellant was an inmate at Corcoran State Prison. Correctional officers received information from other inmates that appellant was suspected of possessing a weapon in his cell. The correctional officers approached appellant's cell, instructed him to exit, and performed a search.

The officers came upon a small box on the cell's top bunk and looked inside. The box contained a seven-and-a-half-inch-long weapon. The weapon consisted of multiple razor blades attached to a piece of wood by copper wire, with a handle wrapped in cloth. The correctional officer took possession of the weapon and logged it into evidence. At trial, the correctional officer explained the weapon was commonly referred to as a tomahawk and was intended for slicing, rather than stabbing, a victim. The weapon itself and pictures of it were admitted into evidence. Further, prior to the incident, appellant had been the sole occupant of the cell for approximately two weeks.

¹ All further references are to the Penal Code, unless otherwise stated.

Procedural Background

Prior to trial, appellant consistently informed the court he did not intend to testify and sought to bifurcate the trial regarding the prior conviction allegations. The court repeatedly denied his request for bifurcation because it erroneously believed he intended to testify. During voir dire, the court informed the jury venire appellant was alleged to have suffered two “prior convictions of a serious or violent felony or juvenile adjudication[,]” and two prior prison convictions. The court provided the jury with the code sections for appellant’s alleged prior convictions but did not give the jury the statutory titles of the violations.

The prosecutor did not mention appellant’s alleged prior convictions in his opening statement, nor were they mentioned during the prosecution’s case-in-chief. At the close of the prosecution’s evidence, and outside the jury’s presence, the court asked appellant how he wished to proceed. Appellant explained he sought a bifurcated trial, and the court reiterated its belief appellant intended to testify. Appellant again informed the court he was not going to testify, and the court finally agreed to bifurcate the trial. Before instructing the jury, the court confirmed it had removed all instructions concerning appellant’s alleged prior convictions. When the court read the amended information to the jury prior to closing arguments, it did not include the prior conviction allegations.

DISCUSSION

Respondent concedes the court erred by informing the jury regarding appellant’s alleged prior convictions. However, respondent contends the single mention of the alleged prior convictions during the initial jury instructions was harmless.

I. Potential Prejudicial Effect of Prior Convictions

In *People v. Calderon* (1994) 9 Cal.4th 69 (*Calderon*), the California Supreme Court held “a trial court has the discretion, in a jury trial, to bifurcate the determination of the truth of an alleged prior conviction from the determination of the defendant’s guilt of

the charged offense” (*Id.* at p. 72.) Although no statute requires bifurcation, authority to bifurcate trial issues is found “in section 1044, which vests the trial court with broad discretion to control the conduct of a criminal trial: ‘It shall be the duty of the judge to control all proceedings during the trial ... with a view to the expeditious and effective ascertainment of the truth regarding the matters involved.’ ” (*Id.* at pp. 74–75.)

The court in *Calderon* emphasized the unique prejudice a defendant may face if the jury that determines guilt also learns of the defendant’s status as a person with one or more prior convictions. “In fact, the value of bifurcating the determination of the truth of a prior conviction allegation from the determination of guilt of the charged offense has been widely recognized.” (*Calderon, supra*, 9 Cal.4th at pp. 75–76.) The Legislature itself has specifically recognized the potential for prejudice when a jury deciding guilt hears of a prior conviction. It has provided that if the defendant admits the prior conviction, “the charge of the prior conviction shall neither be read to the jury nor alluded to during trial, except as otherwise provided by law.” (§ 1025, subd. (e); see *Calderon, supra*, 9 Cal.4th at p. 73.) Although no statute specifically requires bifurcation when the defendant does not admit the conviction, section 1025 indicates the Legislature is concerned with the problem of prejudice when a jury learns of a prior conviction. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1048–1049.)

II. The Single Reference to the Prior Convictions was Harmless

We do not doubt that had the court properly understood that appellant did not intend to testify, it would have bifurcated the trial in the first instance and would not have instructed the jury regarding the alleged prior convictions. However, we also agree with respondent that any purported error by the trial court in instructing the jury on the alleged prior convictions was harmless as it was not reasonably probable the verdict was affected by informing the jury of the nature of the alleged prior convictions. (See *People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Bouzas* (1991) 53 Cal.3d 467, 481.)

Respondent argues the error was harmless because, based on the nature of the charge, it was necessary to inform the jury appellant had been convicted of a crime to explain why he was housed in a penal institution; the jury was properly instructed how to consider the evidence presented in the case; there was overwhelming evidence of appellant's guilt; and the court's statement did not inform the jury of the nature of appellant's alleged prior convictions. We agree.

First, any harm was mitigated by the fact that based on his confinement in a correctional institution, the jury was informed or would reasonably infer appellant was a felon. The only additional evidence the court informed the jury was of the unspecified serious or violent nature of the alleged convictions, not the underlying facts of the convictions themselves. Accordingly, the jury was informed appellant was allegedly convicted of more than one felony and the felonies for which he was convicted were serious or violent.

Although the jury was made aware of his alleged prior convictions, they were correctly instructed that appellant benefited from a presumption of innocence and just because a criminal charge had been filed against him was not evidence the charge was true. The jury was instructed not to be biased against appellant just because he had been arrested, charged with a crime, or brought to trial. Likewise, the jury was instructed that the fact correctional officers were seated with appellant during trial was not evidence, they should not speculate why the officers were present, and completely disregard those circumstances in deciding the issues presented in this case.

Moreover, the jury was instructed it was only to consider evidence in the form of sworn testimony of witnesses, the exhibits admitted into evidence, and anything else the court instructed to be considered evidence. On review, we presume the jury understood and followed the instructions given. (*People v. Sandoval* (2015) 62 Cal.4th 394, 422.) Although the jurors were aware the prosecution was alleging appellant's prior convictions were serious or violent, the allegation was not admissible evidence which the

jury should have relied upon in determining whether appellant committed the charged crime. Moreover, there is no evidence the jury's decision was based on appellant's alleged prior criminal acts. As described, there was significant evidence appellant possessed the weapon based on accounts he was seen with the weapon and it was found in his cell. Also, there was no doubt the item, as constructed, could be effectively used as a weapon. Appellant alleges his guilt was not a forgone conclusion, and, in his defense, he alluded to the fact that the weapon could have been planted in his cell. While appellant made this assertion, he presented no evidence to support such a theory. The error alleged by appellant requires reversal only if there is a reasonable probability of a different verdict had the jury not been informed of the nature of his alleged prior convictions. (*People v. Bouzas, supra*, 53 Cal.3d at p. 481.) After considering all the evidence presented, it is not reasonably likely appellant would have obtained a more favorable verdict if the jury had not been informed his alleged prior convictions were violent or serious.

DISPOSITION

The judgment is affirmed.